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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,716	10/20/2000	Sandrine Decoster	05725.0785.00000	5608

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Finnegan Henderson Farabow Garrett & Dunner LLP
1300 I Street NW
Washington, DC 20005-3315

EXAMINER
YU, GINA C

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/692,716	Applicant(s) DECOSTER ET AL.
	Examiner Gina C. Yu	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *January 23 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-104* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-104* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt is acknowledged of Reply and Amendment filed on January 23, 2002. The finality of the rejections in previous office action mailed on October 23, 2001 are withdrawn in view of applicants' remarks. Claim 18 rejected over Dalle et al. (EP 0874017) ("Dalle") in view of Quack et al. (U.S. Pat. No. 4,237,243) ("Quack") under 35 U.S.C. § 103(a) is withdrawn. Claim 37 is rejected as obvious over Dalle and Mougin et al. (U.S. Pat. No. 6,166,093) ("Mougin") and further in view of Restle et al. (U.S. Pat. No. 6,039,936) ("Restle"). Obviousness-type double patenting rejection is reinstated in this action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-18, 21, and 101-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalle taken with Zviak (The Science of Hair Care, p. 68-70).

The rejection is maintained for reasons of record as stated in the previous action.

(B) Claims 1-17, 19, 20, 22, 24, and 101-104 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dalle in view of Quack.

The claims are rejected for reasons of record as stated in the previous action. Claim 18 has been withdrawn from this rejection.

(C) Claims 1-19, 22, 23, 25-36, and 101-104 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dalle et al. in view of Mougin.

The claims are rejected for reasons of record as stated in the previous action.

(D) Claims 37-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalle and Mougin as applied to claims 1-19, 22, 23, 25-36, and 101-104 above, and further in view of Restle.

The claims are rejected for reasons of record as stated in the previous action. The reason for rejecting claim 37 is found in previous action mailed on May 9, 2001. See office action p. 7, lines 1-7.

(E) Claims 64-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalle and Mougin as applied to claims 1-19, 22, 23, 25-36, and 101-104 above, and further in view of Decoster et al. (U.S. Pat. No. 6,150,311) ("Decoster").

The claims are rejected for reasons of record as stated in the previous action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-104 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-84 of copending Application No. 09/692360 in view of Zviak, Quack, and Mougin.

The instant claims 1-17 and 38 – 104 are substantial duplicate claims of 1-84 of the copending application, which is directed toward a cosmetic composition comprising an aqueous emulsion containing silicone copolymer of formula (I) and cationic surfactants of formula (IV), (V), (VI), (VII) with identical limitations. The copending application does not claim non-cellulose thickeners, which are claimed in claims 18-37 in the instant application.

Zviak, Quack, and Mougin are discussed in the record.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have varied the composition claimed in the copending application by adding the thickening agents well known in the art because of the expectation to have produced cosmetic compositions with desired viscosity, as taught by Zviak, Quack, and Mougin.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

Applicant's arguments filed on January 23, 2002 with respect to the examiner's response dated on October 23, 2001, has been fully considered but they are not persuasive.

Applicants argue that examiner's presumption of obviousness of using known ingredients for its known purposes is without legal support. Examiner disagrees, as the obviousness flows from teaching of the specific use of the ingredients as thickeners in cosmetic field.

Applicants also argue that examiner's reasoning using the thickening agents of Zviak in any shampoo or to have used the thickening agents of Quack in any skin cosmetic, or to have used the thickening agents of Mougin in any mascara composition is far too general to satisfy the obviousness standard. Examiner maintains the rejection because, so long as these references teach the thickening agents for the specific cosmetic applications taught in Dalle, (shampoo, skin cosmetic, and mascara) the obviousness rejection is proper.

Applicants argue that examiner's combining the references are impermissible hindsight. As explained in the previous action, the obviousness rejections are based upon the teachings of the thickening agents used in the art and the benefits thereof. Absent any unexpected results of the applicants' combination of the known components in the art, the rejections are proper.

Applicants further argue that the examiner's conclusion of obviousness is based upon applicants' disclosure of combining the components in the instant claims. Examiner respectfully disagrees, as the basis of the obviousness rejections are based on the combination of the cited references, as set forth in the record.

The rejection of claims 38-63 under 35 U.S.C. § 103(a) as unpatentable over Dalle and Mougin in further view of Restle is maintained for the reasons above and the lack of independent argument to rebut the obviousness of combining Dalle, Mougin, and Restle.

The rejection of claims 64-100 under 35 U.S.C. § 103(a) as unpatentable over Dalle and Mougin in view of Decoster is also maintained for the reasons above and lack of independent argument to rebut the application of Decoster.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezi can be reached on 703-308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
February 9, 2002

MINNA MOEZIE, J.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600